Supreme Court, U.S.
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93-1386

Number _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1993

WILLIAM B. RICHARDSON
Petitioner

v.

UNITED STATES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS, WESTMORELAND HOSPITAL ASSOCIATION, JOSEPH PELUSO, DR. GARY L. BELLANCA AND REBECCA J. MAZIARC

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QUESTION PRESENTED FOR REVIEW

Whether the District Court abused its discretion in dismissing the amended complaint for failure to comply with the Federal Rules of Civil Procedure and the Order of the District Court.

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STATEMENT OF THE CASE

Petitioner seeks review of an order of the United States Court of Appeals for the Third Circuit affirming the dismissal of his amended complaint. The U.S. District Court for the Western District of Pennsylvania dismissed the amended complaint by order dated December 16, 1991, Appendix to Petition, hereinafter "Appendix" A-5-6. The district court's order was based on the report and recommendation of Magistrate Judge (now District Judge) Lancaster, dated November 19, 1991, Appendix A-1-5, and Judge Bloch's de novo review of the pleadings and documents in the case.

The district court found that Petitioner's fourth attempt to state a cause of action failed to comply with Rule 8(a)(2) of the Federal Rules of Civil Procedure and its previous order

specifically directing the Petitioner to amend his complaint in accordance with the procedure outlined therein. Although the amended complaint, Appendix A-14-29, recited a laundry list of constitutional and statutory violations, Magistrate Judge Lancaster was able to discern only that it alleged "some type of due process violation in connection with a bill for medical services ..." Appendix A-2. In recommending that the complaint be dismissed, Magistrate Lancaster found that Petitioner had been given sufficient opportunities to state a cause of action and that he was "not entitled to successive amendments in the hope that he will eventually perfect the pleading." Appendix A-4.

The district court in its order of September 19, 1991 went out of its way to assist the Petitioner, even to the point

of providing specific instructions for amending the complaint and directing the Petitioner to comply with those instructions. Magistrate Judge Lancaster concluded in his Report & Recommendation that the Petitioner had failed to comply with his order. District Judge Bloch, in his order of December 16, 1991, Appendix A-5-6, agreed. Judge Bloch denied Petitioner's request for relief from judgment by order dated February 14, 1992, Appendix A-7. The Third Circuit Court of Appeals, by order dated April 26, 1993, affirmed. Appendix A-35. The Circuit Court denied Petitioner's request for rehearing by order dated September 14, 1993. Appendix A-36. The present Petition for Writ of Certiorari followed.

SUMMARY OF ARGUMENT

The only issue presently before this Court is whether the Court of Appeals for the Third Circuit erred in upholding the district court's dismissal of the amended complaint. The district court dismissed the complaint after Petitioner's fourth attempt to state a cause of action was found lacking in the specificity required by the Rules of Civil Procedure and the district court's order. The court gave Petitioner ample opportunity to comply with the basic rules of pleading, even to the point of providing specific written instructions for amending the complaint.

The Petition for Writ of Certiorari fails to identify any special circumstances which would warrant review by this Court. To the contrary, the district court's exercise of its inherent authority to manage its docket was well

within the broad discretion afforded trial courts in such matters.

ARGUMENT

A. The District Court's dismissal of the amended complaint was a proper exercise of its discretion.

Petitioner fails to recognize or address the only issue before this Court, namely, whether the district court's dismissal of Petitioner's amended complaint constituted an abuse of its broad discretion.

Although the amended complaint was Petitioner's fourth attempt to state a cause of action against the Respondents, nothing in it even roughly approximated a short and plain statement setting forth with factual specificity what the Respondents did or how the Petitioner was harmed thereby so as to provide "fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957).

Consistent with the liberality afforded pro se litigants, e.g., Haines v. Kerner, 404 U.S. 518, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), the district court went out of its way to assist the Petitioner, even to the point of providing specific written instructions on how to amend the complaint. Instead of complying with those simple, clear instructions, the Petitioner merely recited a laundry list of constitutional deprivations, in violation of the court's instruction to avoid generalized references to violations of constitutional rights.

The district court, acting through Magistrate Judge Lancaster, specifically found that the Petitioner had been given sufficient opportunity to amend the complaint and that he was not entitled to successive amendments in the hope that he

would eventually perfect his pleading. See Magistrate Judge Lancaster's Report and Recommendation, Appendix A-4. The district court, acting through Judge Bloch, concurred in the Magistrate's Report and Recommendation, Appendix A-6-7, and the Third Circuit properly affirmed the district court's exercise of its broad discretion. Appendix A-35.

B. The present petition fails to identify any special or important reasons for granting certiorari.

It is well settled that district courts may exercise their discretion to dismiss a complaint where a party has repeatedly failed to cure deficiencies therein, e.g., Foreman v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 255 (1962), or where the plaintiff refuses to follow the sound and proper directions of the district court with respect to amendment. E.g. Maddox v.

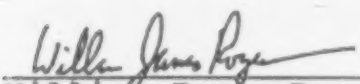
Shroyer, 302 F.2d 903 (D.C. Cir.), cert. denied, 371 U.S. 825, 83 S.Ct. 45, 9 L.Ed.2d 64 (1962).

The present record is devoid of any evidence of conflict between the circuit courts, between the circuit court and the highest state court or any departure from the accepted and usual course of judicial proceedings on the part of the district court or the court of appeals so as to warrant this Court's exercise of its supervisory power. Supreme Court Rule 10. To the contrary, the district court's dismissal of the complaint after Petitioner's fourth attempt at amendment was well within the broad discretion afforded trial courts in such matters. Cf. Frazier v. Southeaster Pennsylvania Transportation Authority, 785 F.2d 65, 70 n. 6 (3d Cir. 1986) (complaint properly dismissed after two previous attempts to amend).

CONCLUSION

For the reasons set forth herein Respondent requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,



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